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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/578,254

02/05/2007

Susumu Yamaguchi

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EXAMINER

WILLIAMS, LELA

ART UNIT

PAPER NUMBER

1794

NOTIFICATION DATE

DELIVERY MODE

02/02/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/578,254	<b>Applicant(s)</b> YAMAGUCHI ET AL.	
	<b>Examiner</b> LELA S. WILLIAMS	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 October 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10, 16, 18 and 21-24 is/are pending in the application.
- 4a) Of the above claim(s) 1-10 and 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16, 18 and 21-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/22/10</u> . | 6) <input type="checkbox"/> Other: _____  |

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### **DETAILED ACTION**

Applicants' amendment filed on July 6, 2009 has been fully considered. The amendment necessitated the new grounds of rejection set forth below and therefore, the following action is final.

#### ***Information Disclosure Statement***

The information disclosure statement filed January 22, 2010 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. Non Patent Literature Document, *Development of High Oleic, Low Linolenic Canola Oil and its Characteristics*, Vol. 34, No. 4, 1999, pps. 47-50 has not been considered since a concise explanation of the relevance, in the English language, of the document has not been provided.

#### ***Claim Objections***

1. Claims 22 and 23 objected to under 37 CFR 1.75(c) as being in improper form since a claim should not refer to two sets of claims to different features. See MPEP § 608.01(n). Accordingly, and given that claims 1, 9, and 11 have been cancelled, claims 22 and 23 have been examined as depending on claim 16 only.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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3. Claims 16,18,21,22 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claim 16 oil composition comprising arachidonic acid is confusing because it states "wherein an  $\alpha$ -linolenic acid content is 5% or less"; this seems as if the  $\alpha$ -linolenic acid is included as an ingredient of the arachidonic acid and not a separate ingredient.
5. Claims 18, 21, 22 and 23 are rejected as being dependent of rejected claim 16.
6. Claim 22 and 23 recites the limitation "the body taste improver". There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

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claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**10. Claims 16 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hiroshi JP 10-099048.**

**Regarding claims 16 and 21**, Hiroshi discloses an oil composition comprising arachidonic acid, obtained from alga [0007] in an amount ranging from 0.1 to 10% for body in formulated milk [abstract &0005]. Example 4 shows the ingredients of the composition are mixed and an oil composition is formed, however the composition is not classified as a vegetable fat and oil composition. Although the composition of the reference does not meet this classification, one of ordinary skill in the art would reasonably conclude the oil composition of the reference would also be desirable for body in a vegetable fat and oil composition. The reference is also silent to the amount of  $\alpha$ -linolenic implying the amount, if any is less 5%.

**Regarding claims 22 and 23**, Hiroshi discloses an oil composition and a method for producing said composition, which is added to formulated milk product for body [abstract]. Given that the reference composition and the present composition are comprised of the same ingredients, the oil composition of the reference would inherently improve the body taste. It is noted that reference is to formulated milk product, which would fall under the general category of food.

**11. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hiroshi JP 10-099048 as applied to claim 16 above, and further in view of Yoshitaka et al. JP 4-197134.**

Hiroshi is applied as explained above in paragraph 10. Hiroshi does not disclose an oleic or linoleic acid content. Yoshitaka discloses a fat and oil composition comprising 20-60% of oleic acid [abstract]. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the said amount of oleic acid in a fat and oil composition to improve the texture and mouthfeel, which would improve the overall body of the product produced by said oil [abstract].

***Response to Amendment***

12. Claims 16, 18 & 21-23 are pending. Claims 1-10 and 24 have been withdrawn. Claims 11-15, 17, 19 and 20 have been canceled.

***Response to Arguments***

13. Applicant's arguments, filed October 5, 2009, with respect to the rejection(s) of claim(s) 16-23 under Higashiyama et al. have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Hiroshi JP 10-099048 and Yoshitaka et al. JP 4-197134.

***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LELA S. WILLIAMS whose telephone number is (571)270-1126. The examiner can normally be reached on Monday to Thursday from 7:30am-5pm (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on 571-272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LELA S. WILLIAMS/  
Examiner, Art Unit 1794

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/L. S. W. /

/Callie E. Shosho/

Supervisory Patent Examiner, Art Unit 1794